

# Chapter 1

## Introduction

### I. Introduction.

- A. The Iowa Occupational Safety and Health Act, Iowa Code Chapter 88 (The Act), is a State statute of general application designed to regulate employment conditions relating to occupational safety and health and to achieve safer and more healthful workplaces throughout the State. By terms of the Act, every employer is required to furnish each employee employment and a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm and, further, to comply with occupational safety and health standards promulgated under the Act.
- B. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of workplaces, and recordkeeping requirements. Enforcement proceedings initiated by the Iowa Division of Labor (IDOL), review proceedings before an independent quasi-judicial agency (Employment Appeal Board), and judicial review are provided by the Act.
- C. Employees and representatives of employees are afforded a wide range of substantive and procedural rights under the Act. Moreover, effective implementation of the Act and achievement of its goals depend in large measure upon the active but orderly participation of employees, individually and through their representatives, at every level of safety and health activity. It is essential that such participation and employee rights be preserved if the fundamental purposes of the Act are to be realized.
- D. Iowa Code 88.9(3) of the Act provides, in general, that no person shall discharge or in any manner discriminate against any employee because the employee has exercised rights under the Act. The IOSH Administrator (IA) has over-all responsibility for the investigation of discrimination complaints under Iowa Code 88.9(3). They have authority to dismiss non-meritorious complaints (absent withdrawal); approve acceptable withdrawals; and negotiate settlement of meritorious complaints or affect recommendations of litigation to the Legal Staff.
- E. The Occupational Safety and Health Act, Public Law 91-596, is a Federal statute. In addition to the over-all responsibility of enforcing Section 11(c) of the OSH Act,

Federal OSHA has the responsibility to investigate claims of discrimination filed by employees under the provisions of thirteen other “whistleblower” statutes as follows:

1. Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. §2651
2. International Safe Container Act (ISCA), 46 U.S.C. §80507
3. Surface Transportation Assistance Act (STAA), 49 U.S.C. §31105
4. Clean Air Act (CAA), 42 U.S.C. §7622
5. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9610
6. Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §1367
7. Safe Drinking Water Act (SDWA), 42 U.S.C. §300j- 9(i)
8. Solid Waste Disposal Act (SWDA), 42 U.S.C. §6971
9. Toxic Substances Control Act (TSCA), 15 U.S.C. §2622
10. Energy Reorganization Act (ERA), 42 U.S.C. §5851
11. Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21), 49 U.S.C. §42121
12. Corporate and Criminal Fraud Accountability Act, Title VIII of the Sarbanes-Oxley Act (SOX), 18 U.S.C. §1514A (SOX)
13. Pipeline Safety Improvement Act (PSIA), 49 U.S.C. §60129
14. Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109
15. National Transit Systems Security Act (NTSSA), 6 U.S.C. §1142
16. Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. §2087
17. Affordable Care Act (ACA), 29 U.S.C. §218C
18. Consumer Financial Protection Act of 2010 (CFPA), Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. §5567
19. Seaman’s Protection Act, 46 U.S.C. §2114 (SPA), as amended by Section 611 of the Coast Guard Authorization Act of 2010, P.L. 111-281
20. FDA Food Safety Modernization Act (FSMA), 21 U.S.C. §399d

Statutes number 4 through 9 above are collectively referred to as the “EPA statutes” (Environmental Protection Agency).

It should also be noted that there may be some overlap between the State OSHA program and Federal OSHA on the above. For example, complaints about

retaliation for activities relating to occupational safety and health are covered by 88.9(3), while air carrier safety or security under AIR 21 is covered by Federal OSHA. Complaints about retaliation for activities relating to occupational safety and health are covered by 88.9(3) while commercial motor vehicle safety under STAA is covered by Federal OSHA. And, complaints about retaliation for activities relating to occupational safety and health are covered by 88.9(3) while public health (student exposure) issues about asbestos in schools under AHERA is covered by Federal OSHA. Communication between the Discrimination Investigator and Federal OSHA will take place on a case by case basis to establish which agency has jurisdiction.

## **II. Functional Responsibilities.**

### **A. Responsibilities.**

1. **IOSH Administrator (IA)** The IA has overall responsibility for all 88.9(3) investigation and outreach activities. The IA is authorized to issue determinations and approve settlement of complaints filed under the 88.9(3) statute.
2. The IA is responsible for implementation of policies and procedures, and for the effective supervision of the discrimination investigations, including the following functions:
  - a. Receives discrimination complaints from the National, Regional, and Area Office, Compliance Safety and Health Officers (CSHO) or other entities.
  - b. Ensures that safety and health or environmental ramifications are identified during complaint screening and, when necessary, makes referrals to the appropriate office, agency, or entity.
  - c. Schedules assignment of investigative cases to the Discrimination Investigator (Investigator).
  - d. May investigate and conduct settlement negotiations for cases that are unusual or of a difficult nature.
  - e. Provides guidance, assistance, supervision, and direction to the Investigator during the conduct of investigations and settlement negotiations.
  - f. Reviews investigation reports for comprehensiveness and technical accuracy.
  - g. Recommends changes in policies and procedures in order to better accomplish agency objectives.
  - h. Develops outreach programs and activities.
  - i. Provides field training for Investigators.
  - j. Performs necessary and appropriate administrative and personnel actions such as performance evaluations.
  - k. Performs other special duties and represents IOSH to other

agencies and the media.

3. Discrimination Investigator. The investigator carries out responsibilities under the direct guidance and supervision of the IA which include, but are not limited to, the following functions:
  - a. Conducts screening of incoming complaints to determine whether the allegations warrant field investigation.
  - b. Reviews case files for background information concerning any other proceedings which relate to a specific complaint. These would include, but not be limited to, safety and health inspections and consultation visits. Copies of materials needed for the discrimination file will be made and contacts of other entities for information will be made.
  - c. Interviews complainants and witnesses and obtains written statements as necessary and obtains supporting documentary evidence as available.
  - d. Follows through on leads resulting from interviews and statements.
  - e. Interviews and obtains written statements from respondent officials, reviews pertinent records, and obtains relevant supporting documentary evidence.
  - f. Applies knowledge of the legal elements and evaluates the evidence revealed, writes an investigation report detailing the facts of the case, analyzes the evidence, and takes appropriate action needed.
  - g. Negotiates with the respondent in merit cases to obtain a settlement agreement which provides prompt resolution and satisfactory remedy.
  - h. Monitors implementation of agreements or court orders, as assigned, determining specific action necessary and sufficiency of action taken or proposed by the respondent. If necessary, recommends further legal proceedings to obtain compliance.
  - i. Assists the IA in discrimination matters with other agencies, OSHA Area Offices, and the general public, and performs outreach activities.
  - j. Assists in the litigation process, including trial/hearing preparations and testifying in proceedings.
  - k. As assigned, compiles information for the IA as needed for inquiries from other entities and Complaints Against State Program Administration (CASPAs).
  - l. Makes referrals to Federal 11(c) Programs when the discrimination does not fall under the State Program as listed in I. E. of this Chapter, with minor exceptions that are in part covered by both State and Federal “whistleblower” statutes.

m. Attends conferences and training sessions.

4. Compliance Safety and Health Officer (CSHO). Each CSHO is responsible for maintaining a general knowledge of the protections under 88.9(3). Using this knowledge, the CSHO may then advise employers and employees of their responsibilities and rights granted under such laws, receive complaints and expeditiously notify the IA/Investigator of the receipt of a discrimination complaint.
5. Legal Staff. The Legal Staff provides assistance to the IA/investigator when needed and investigates appeals on behalf of the Labor Commissioner. The Legal Staff reviews cases submitted by the investigator for their legal merits, makes decisions regarding those merits, and litigates those cases deemed meritorious as appropriate. If possible, they settle merit cases that have been recommended for litigation by the investigator or file in the District Court having jurisdiction and represents the Labor Commissioner in that Court.

B. Personal Conduct and Activities.

1. Courtesy to the Public. The IDOL emphasizes that the proper and courteous discharge of duties and responsibilities by CSHO's and the Investigator is essential to the effective administration of the law. The success of the program depends upon their knowledge and understanding of the laws and regulations as well as upon their courtesy and tact in dealing with employers and employees. Investigators represent the State of Iowa and must at all times conduct themselves in such a manner as to reflect that responsibility. They must never indulge in conduct unbecoming their positions, even when such conduct is invited or incited by those with whom they are dealing.
2. Correspondence with the Public. Investigators are the primary public relations representatives of the State. All written correspondence received by the Investigator from the public must be responded to in a prompt and courteous manner. The investigator must respond to correspondence which is directed to an investigator but which the investigator must forward to a higher authority, other agency or person. The investigator must notify the writer that the original correspondence is being forwarded for action by the authority, agency or person. Other inquiries received by the Investigator which are outside the investigator's scope of normal job activities must be forwarded to the IA for appropriate action.
3. Acceptance of Gratuities. No IOSH employee shall solicit, accept or agree to accept, directly or indirectly, a favor, gift, loan, free service or other item of economic value in any form from any outside person, corporation or group which might reasonably be interpreted by others as

being of such a nature that it could affect impartiality. See Iowa Gift Law, Iowa Code Chapter 68B.

4. Subpoenas and Testimony.

- a. Subpoenas Served on Investigator. The investigator, upon being served with a subpoena, must immediately communicate with the IA. The IA will refer the matter to the Legal Staff for action.
- b. Testifying in Proceedings. The investigator may be required to testify in proceedings on behalf of the State. The investigator should keep this fact in mind when conducting an investigation and recording observations. Notes and reports must reflect conditions accurately and must be included in the case file. If the investigator is called upon to testify, the reports and notes will be invaluable as a tool for recalling actual conditions and statements, and reinforcing the facts of the case.

5. Release of Investigation Information.

- a. Investigation materials include notes, work papers, memoranda, records, and audio or videotapes received or prepared by the investigator concerning, or relating to the performance of any investigation, or in the performance of any official duties. Such original materials and all copies must be included in the case file, where necessary, to support the investigative findings. These records are the property of the State and a part of the case file. Under no circumstances are investigation notes and work papers to be destroyed or retained or used by an employee of the State for any private purpose.
- b. The information and statements obtained from investigations are confidential except for those which may be released under Iowa Code Chapter 22, the Open Records Act (ORA). Requests for the public release of any information must be directed to the IA for release according to current ORA and agency policy.
  - 1. Cases under 88.9(3) shall be considered open investigations until a final determination has been made as to whether litigation will be pursued.
  - 2. After the case is closed, much of the case file material is available for disclosure upon receipt

of an ORA request, a request from another Federal or State agency, a request from an ALJ, or through discovery procedures. The entire narrative report will normally be disclosed upon request, including interviews of officials representing the respondent, interviews of complainant and interviews of other individuals who have not requested confidentiality.

- c. Any inquiry received by the investigator concerning an investigation must be transmitted to the IA.
- d. If, during the course of an investigation, the employer identifies any materials obtained as a trade secret and the investigator has no reason to question such identification, information obtained in such areas will be labeled "Trade Secret." If the IA agrees with this characterization, it will not be disclosed except in accordance with the provisions of the ORA or similar protections under other statutes.